

**Letter of Findings: 01-20140486  
Indiana Individual Income Tax  
For The Tax Years 2009-2012**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### **HOLDING**

For purposes of the Indiana individual income tax, husband and wife were required to file 2009-2012 Indiana individual income tax returns because they were Indiana residents. Husband and wife's uninterrupted ownership of their Indiana home - including claiming the Homestead Credit on that residence - manifested an intention to retain their Indiana domicile. Husband and wife were not responsible for the negligence penalty because they established reasonable cause for penalty abatement. Husband and wife were responsible for the interest that accrued on the unpaid tax liabilities.

### **ISSUES**

#### **I. Indiana Individual Income Tax - Residency: Domicile.**

**Authority:** IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

Taxpayers protest the Department's proposed assessment for the 2009-2012 tax years.

#### **II. Tax Administration - Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of the negligence penalty.

#### **III. Tax Administration-Interest.**

**Authority:** IC § 6-8.1-10-1.

Taxpayers protest the imposition of interest.

### **STATEMENT OF FACTS**

The Indiana Department of Revenue ("Department") in a letter to Taxpayers dated July 2014, stated that, "After evaluating your account, the Department has determined that you never abandoned your Indiana Domicile. Accordingly, you incorrectly failed to file an Indiana return for tax years 2009-2012." Subsequently, the Department issued Proposed Assessments of 2009-2012 individual income taxes.

Taxpayers disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers' Representative explained the basis for the protest. This Letter of Findings results.

#### **I. Indiana Individual Income Tax - Residency: Domicile.**

### **DISCUSSION**

The Department determined that Taxpayers were Indiana residents, that they failed to file their 2009-2012 Indiana income tax returns, and that Indiana income tax was due for 2009-2012. Taxpayers, to the contrary, claimed that they were not required to file their 2009-2012 Indiana income tax returns and they did not owe any Indiana income tax because Taxpayer Husband was not an Indiana resident and Taxpayer Wife did not earn enough income to file. Taxpayers concede that they filed their Federal Income Tax returns jointly.

The issue is whether, for the tax years 2009-2012, Taxpayers were Indiana residents and therefore were subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state. . . ." IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Additionally, [45 IAC 3.1-1-22](#) states:

**For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

**In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.**

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

**(Emphasis added).**

In *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer, Mr. Walton, moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for

several years for the benefits of his wife's health. Indiana assessed Mr. Walton state income tax on his intangible property. Id. at 276-78. Mr. Walton disagreed, arguing that his intangible property was not subject to Indiana taxes because he was domiciled in Michigan. Id. The court found that Mr. Walton owned and managed a company and stores in Michigan; that Mr. Walton maintained his membership with lodges, clubs, and a church in Sturgis, Michigan; that Mr. Walton on various occasions exercised his civil and political rights in Sturgis, Michigan; and that Sturgis, Michigan was used in Mr. Walton's legal documents, including policies of insurance, mortgages, leases, contracts, and other instruments. Id. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. Id. The court explained, in relevant part, that:

The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." **"If the taxpayer has two residences in different states, he is taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one."**

No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and **is usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "Domicile," . . . "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person" . . . "is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone" but upon a consideration of all the circumstances of the case . . .

Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law. . . . **To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely.** Id. at 277-78.

(Internal citations omitted) (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. Id. at 1317-18 (Ind. 1988).

(Internal citations omitted) (**emphasis added**).

In this instance, during the protest process, Taxpayer Husband claimed that he moved to Florida during 2009-2012. Taxpayer Husband contends that he was not an Indiana Resident because he did the following: he possessed a Florida Driver's license; purchased a residence in Florida; registered to vote in Florida; changed the address of his individual bank account in Florida to his Florida address; resigned from the Board of Directors of an Indiana Organization; and had a Last Will and Testament, General Durable Power of Attorney and trust documents prepared in compliance with Florida Law. However, during the periods while Taxpayer Husband was in Florida, Taxpayers retained their Indiana home. Taxpayer explained that his adult children and his wife occupied the Indiana home during the time he spent in Florida. In order to change one's domicile from Indiana to an out-of-state location, the law requires the "intent of establishing a home at that place," [45 IAC 3.1-1-22](#), along with "acts evidencing [an] intention to make the new domicile a home in fact . . . ." Bayh, 521 N.E.2d at 1317. However, the law also requires a simultaneous manifestation of an intent to abandon the Indiana domicile. Bayh, at 1317. As the law states, "[A] person has only one domicile at a given time . . . ." [45 IAC 3.1-1-22](#). Significantly, Taxpayer Husband retained full ownership of Taxpayers' Indiana home during all of 2009-2012, made no attempt to dispose of that home, and used the home as the residence for his wife and adult children. Most significant, Taxpayer continued to claim the Homestead Credit for the Indiana home. In doing so, Taxpayer necessarily verified that the Indiana home was his "principal place of residence" and, by doing so, took advantage of the (typically) significant tax advantage attendant to claiming the credit. IC § 6-1.1-12-37(a)(2).

In short, any individual who was domiciled in this state during the taxable year is a resident in this State. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact. . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." Bayh, 521 N.E.2d at 1317-18. Taxpayers' documentation demonstrated otherwise.

## FINDING

Taxpayers' protest is respectfully denied.

## II. Tax Administration - Negligence Penalty.

### DISCUSSION

Taxpayers requested that the Department abate the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty when "the taxpayer affirmatively establishes that the failure . . . was due to reasonable cause and not due to negligence." [45 IAC 15-11-2](#)(c). The taxpayer "must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the

penalty imposed under this section." Id. The Department is mindful that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case."

In this instance, upon review, Taxpayers demonstrated that the steps they took since 2009 led Taxpayer Husband to reasonably believe he relocated to Florida. Given the totality of the circumstances, the Department is prepared to agree that Taxpayers affirmatively demonstrated that their failure to file and to pay tax for the 2009-2012 tax years was due to reasonable cause and not due to negligence. Taxpayers, however, are on notice that should similar circumstances arise the negligence penalty may not be abated.

#### **FINDING**

Taxpayers' protest of the negligence penalty is sustained.

#### **III. Tax Administration - Interest.**

#### **DISCUSSION**

The Department assessed interest on the unpaid tax liabilities. Taxpayer requested that the Department waive interest.

IC § 6-8.1-10-1(a) provides, in relevant part, as follows:

If a person . . . fails to pay the full amount of tax . . . by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Pursuant to IC § 6-8.1-10-1(e), the Department does not have the authority to waive the interest.

#### **FINDING**

Taxpayers' protest of interest is respectfully denied.

#### **SUMMARY**

For the reasons discussed above, Taxpayers' protest of the Department's proposed assessments for the 2009-2012 tax years is denied. Taxpayers' protest of the negligence penalty is sustained. Taxpayers' protest of interest is denied.

*Posted: 03/30/2016 by Legislative Services Agency*

An [html](#) version of this document.